

01P2

02/15/05

Atty. Dkt. No. 026032-4626

DAC
JTW

FEB 14 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hernandez et al.

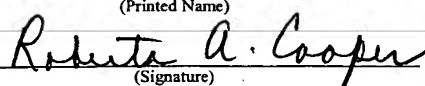
Title: CANTILEVER SUPPORTED
VEHICLE SEAT AND SYSTEM

Appl. No.: 10/700,878

Filing Date: 11/04/2003

Examiner: Douglas L. Wood

Art Unit: 3636

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
EV 459164645 US	02/14/05
(Express Mail Label Number)	(Date of Deposit)
Roberta A. Cooper	
(Printed Name)	
	
(Signature)	

TRANSMITTAL

Mail Stop: PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

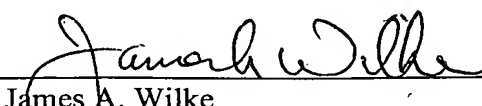
Attached herewith are the following documents related to this application.

- [X] Request for Reconsideration of Petition Under 37 CFR § 1.47(a) (2 pages).
- [X] Statement of Facts for Petition Pursuant to 37 CFR § 1.47(a) (2 pages).
- [X] Copy of Decision Refusing Status Under 37 CFR § 1.47(a) (4 pages).

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §1.16-1.17 or credit any overpayment to deposit account number 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post dated or otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to deposit account number 06-1447.

Respectfully submitted,

Date 02-14-05
FOLEY & LARDNER LLP
Customer Number: 26371
Telephone: (414) 297-5776
Facsimile: (414) 297-4900

By 
James A. Wilke
Attorney for Applicants
Registration No. 34,279

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hernandez et al.
Title: CANTILEVER SUPPORTED
VEHICLE SEAT AND SYSTEM
Appl. No.: 10/700,878
Filing Date: 11/04/2003
Examiner: Douglas I. Wood
Art Unit: 3636

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
EV 459164645 US	02/14/05
(Express Mail Label Number)	(Date of Deposit)
Roberta A. Cooper	
(Printed Name)	
<i>Roberta A. Cooper</i>	
(Signature)	

REQUEST FOR RECONSIDERATION OF PETITION
UNDER 37 C.F.R. 1.47(a)

Mail Stop: PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

In reply to the decision refusing status under 37 C.F.R. 1.47(a), mailed December 14, 2004, Applicants hereby request Reconsideration of the Petition to treat the above patent application as being made by inventors Cynthia Hernandez, Alan Collins and Roger Whitley on behalf of non-signing inventors Marne Hollis and Charlotte Schiffer. The document dismissing the above identified petition identifies two deficiencies in the petition as described in pages 2 and 3 of the decision refusing status. Specifically, additional information relative to the efforts made to locate the non-signing inventors must be provided and identified deficiency in the Declaration relative to the signing block of joint inventor Collins.

With respect to the non-signing inventor issues, attached is an Affidavit signed by Ms. Jodi A. Hemmeke of Johnson Controls Technology Company (hereinafter "JCI") setting forth the efforts made initially to contact the non-signing inventors Hollis and Schiffer and also containing information relative to subsequent and recent efforts to contact the non-signing inventors. Ms. Hemmeke is the person having first hand knowledge of details relating to the information that was sent to the non-signing inventors and efforts made to contact the non-signing inventors.

With respect to the alleged discrepancies in the Declaration, the undersigned submits that the signed Declaration is in accord with 37 C.F.R. §1.52(c)(1). Specifically, the name of residence of Mr. Collins was mistyped as "Worthington". However, in the Post Office address, three lines below the residence line, the correct spelling of the city "Worthing" appears. The cross out of the letters "ton" in the misspelled resident city was signed by the applicant on the same sheet of paper as the cross out appears. 37 C.F.R. §1.52(c)(1) requires any alterations to be "dated and initialed" or signed by the applicant on the same sheet of paper. It is submitted that the signature of Alan Collins appears on the same sheet of paper as the cross out in the resident city name and is properly spelled in the Post Office address appearing on the same sheet of paper and signed and dated by the inventor Collins. Accordingly, it is submitted that the Declaration is not deficient and does in fact comply with applicable regulations.

With respect to the comment in the decision refusing status relating to the page numbering, it is submitted that that is not a deficiency since the signatures of the signing inventors appear in the proper signature blocks and notwithstanding the page numbering, the identification of the Declaration and Power of Attorney on all the sheets of the Declaration contain the attorney docket number in the upper right hand corner, it is submitted that two signatures by the same inventor are not required.

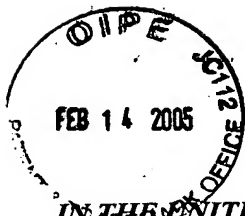
It is respectfully requested that the information provided herein, including the attached Affidavit, corrects the deficiencies identified in the decision refusing status on the document and it is respectfully requested that the petition under 37 C.F.R. §1.47(a) be approved and the application forwarded for examination.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §1.16-1.17 or credit any overpayment to deposit account number 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post dated or otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to deposit account number 06-1447.

Respectfully submitted,

Date 02-14-05
 FOLEY & LARDNER LLP
 Customer Number: 26371
 Telephone: (414) 297-5776
 Facsimile: (414) 297-4900

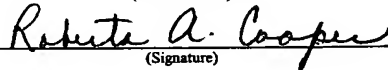
By James A. Wilke
 James A. Wilke
 Attorney for Applicants
 Registration No. 34,279



Atty. Dkt. No. 026032-4626

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hernandez et al.
Title: CANTILEVER SUPPORTED
VEHICLE SEAT AND SYSTEM
Appl. No.: 10/700,878
Filing Date: 11/04/2003
Examiner: Atty. Douglas I. Wood
Art Unit: Office of Petitions

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
EV 459164645	02/14/05
(Express Mail Label Number)	(Date of Deposit)
Roberta A. Cooper	
(Printed Name)	
	
(Signature)	

STATEMENT OF FACTS FOR PETITION PURSUANT TO 37 C.F.R. §1.47(a)

After being duly sworn, I, Jodi A. Hemmeke, hereby depose and state:

1. I am an adult resident of the State of Michigan.
2. At all times relevant I have been employed as a Assistant in the Corporate Intellectual Property Department of Johnson Controls Technology Company (hereinafter "JCTC") with offices in Holland, Michigan.
3. Several of the responsibilities of my employment include forwarding documents to inventors, obtaining the signatures of inventors of various documents relating to intellectual property of JCTC and providing information to JCTC outside counsel.
4. In the month of November, 2004, I began the process of obtaining signatures of the inventors listed in the application which is captioned above. The signatures of three of the five named inventors were obtained, they being Cynthia Hernandez, Alan Collins and Roger Whitley.
5. In November, 2004, I prepared information packets for mailing to inventors Marne Hollis and Charlotte Schiffer, with each packet including a copy of the patent application, copy of the declaration to be signed, an inventor information sheet and a letter from myself explaining what was requested of each inventor.
6. The information packets were addressed to each of the inventors at the last known address of each of the named inventors.
7. Our records indicate that the last known address of Marne Hollis is Hammerstrasse 42, 40219 Duesseldorf, Germany.
8. Our records indicate that the last known address of Charlotte Schiffer is IM Eulenflug 5a, D-51399, Burchheid, Germany.

9. The packet of information sent to inventor Schiffer was returned unopened. A copy of the return mailer slip has been previously filed with the declaration of Attorney James A. Wilke.

10. I did not receive a response from inventor Hollis nor was the packet of material returned to us.

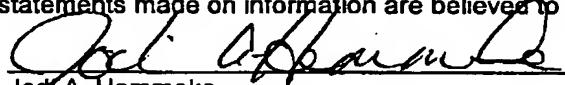
11. I requested that the Johnson Controls Human Resources Department attempt to obtain updated contact information for both inventors Schiffer and Hollis, but to date, no new current information is available or has been received.

12. I have requested information from the other inventors, specifically, Hernandez and Whitley to obtain contact information, however, no new contact information on either Schiffer or Hollis has been obtained.

13. I also attempted to obtain information on inventors Hollis and Schiffer using an online search site (Identity Crawler.com). The results of that online search revealed the same address for Hollis as stated above. The online search did not reveal an address for Schiffer.


14. This Affidavit is provided in support of a Request for Reconsideration of Petition under 37 C.F.R. 1.47(a) filed with the U.S. Patent and Trademark Office.

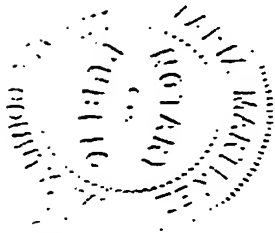
15. I hereby declare that all of the statements made herein are of my own knowledge and are true and that all statements made on information are believed to be true.


Jodi A. Hemmeke 2/14/05

State of MICHIGAN)
County of Ottawa) ss.

On this 14th day of February, 2005, before me, a notary public in and for said county, appeared Jodi A. Hemmeke, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, and he/she acknowledged that he/she signed, sealed, and delivered the said instrument as his/her free and voluntary act for the uses and purposes therein set forth.


Notary Public
MARIA MARTINEZ
Notary Public, Ottawa County, MI
My Commission Expires: Feb. 19, 2008
(Seal)





UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JOHN VANOPHEM
FOLEY & LARDNER
500 WOODWARD AVENUE
SUITE 2700
DETROIT MI 48226-3489

COPY MAILED

DEC 14 2004

OFFICE OF PETITIONS

In re Application of :
Hernandez, Collins, Hollis, :
Schiffer, and Whitley : DECISION REFUSING STATUS
Application No. 10/700,878 : UNDER 37 CFR 1.47(a)
Filed: 4 November, 2003 :
Attorney Docket No. 026032-4626 :

This is in response to the petition filed under 37 CFR 1.47(a) on 9 November, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 4 November, 2003, without an executed oath or declaration. Accordingly, on 10 September, 2004, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration, a surcharge for its late filing, and replacement drawings in compliance with 37 CFR 1.84 and 1.121.

In response, on 9 November, 2004, petitioners filed replacement drawings, the present petition, the petition fee and surcharge

and a declaration naming Cynthia Hernandez, Alan Collins, Marne Hollis, Charlotte Schiffer, and Roger Whitley as joint inventors and signed by joint inventors Hernandez, Collins, and Whitley on behalf of themselves and non-signing joint inventors Hollis and Schiffer.

Petitioners assert that a copy of the declaration was sent to each of the non-signing inventors. The letter sent to joint inventor Schiffer was returned as undeliverable, while no response was received from joint inventor Hollis. A copy of the envelope showing the letter to Schiffer was returned as undeliverable is attached.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

- (3) the petition fee;

- (4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

- (5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1) and (2).

In regards to item (1), petitioners have not provided details of the efforts made to locate non-signing inventor Schiffer. Such details should be set forth in an affidavit or declaration of facts by a person having first-hand knowledge of the details. Additionally, petitioners may show diligent efforts by use of a national registry or other database to determine a current address for the non-signing inventor. If a more recent address is discovered, petitioners should send or give a copy of the application papers to the inventor at that address. If repeated attempts to contact the non-signing inventor are unsuccessful, petitioners will have shown that despite diligent efforts, the inventor could not be reached.

Furthermore, since the letter sent to joint inventor Hollis was not returned as undeliverable, it is presumed that the inventor received it and is not unavailable. As such, before a *bona fide* refusal can be shown, petitioners must provide proof that a copy

of the application as filed (specification, including claims, drawings, if any, and the declaration) was sent to Hollis, but that she refused, either orally or in writing, to sign the declaration or did not return it.

If there is a written refusal, a copy of the written refusal should be submitted with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts. If the application is returned as undeliverable, petitioners should present a copy of the envelope showing that the application sent to the last known address of the non-signing inventor was returned as undeliverable by the post office.

In regards to item (2), the declaration contains is defective in that it contains non initialed and/or non-dated alterations.¹ Specifically, there is an uninitialed and/or undated alteration in the signature block(s) for joint inventor Collins. It is further noted that the copy of the declaration signed by Hernandez contains Collins' signature block on Page 4 of 5, while the declaration signed by Whitley contains Collins' signature block on Page 5 of 5. A new oath or declaration in compliance with 37 CFR 1.63 and 1.67, signed by the inventor to whom the error or deficiency relates is required.²

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions


By hand: U.S. Patent and Trademark Office
 220 20th Street S.
 Customer Window, Mail Stop Petitions
 Crystal Plaza 2, Lobby, Room 1B03
 Arlington, VA 22202

¹See 37 CFR 1.52(c).

²37 CFR 1.67(a)(2).

The address listed on the petition is different than the correspondence address of record. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.


Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

cc: Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee WI 53202-5306